

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TERRY WALKER,
Plaintiff

v.

KATHY BRITTAIN, et al.,
Defendants

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No. 1:22-cv-00965

(Judge Kane)

ORDER

AND NOW, on this 26th day of July 2022, upon consideration of Plaintiff's complaint (Doc. No. 1), and in accordance with the accompanying Memorandum, **IT IS ORDERED** **THAT:**

1. Plaintiff's motion for leave to proceed in forma pauperis (Doc. No. 2) is **GRANTED**, and the complaint (Doc. No. 1) is **DEEMED** filed;
2. Plaintiff shall pay the full filing fee of \$350.00 based on the financial information provided in the application to proceed in forma pauperis. The full filing fee shall be paid regardless of the outcome of the litigation;
3. Pursuant to 28 U.S.C. § 1915(b)(1) and (2), the Superintendent/Warden or other appropriate official at Plaintiff's place of confinement is directed to deduct an initial partial filing fee of 20% of the greater of:
 - a. The average monthly deposits in the inmate's prison account for the past six months, or
 - b. The average monthly balance in the inmate's prison account for the past six months.

The initial partial filing fee shall be forwarded to the Clerk of the United States District Court for the Middle District of Pennsylvania, P.O. Box 1148, Scranton, Pennsylvania, 18501-1148, to be credited to the above-captioned docket number. In each succeeding month, when the amount in Plaintiff's inmate trust fund account exceeds \$10.00, the Superintendent/Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Plaintiff's inmate trust fund account until the fees are paid. Each payment shall reference the above-captioned docket number;

4. The Clerk of Court is directed to **SEND** a copy of this Order to the Superintendent/Warden of the institution where Plaintiff is presently confined;
5. Plaintiff's complaint (Doc. No. 1) is **DISMISSED** for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2) as follows:
 - a. Plaintiff's Fourteenth Amendment procedural due process claim against Defendant Brittain is **DISMISSED WITH PREJUDICE**;
 - b. Plaintiff's Eighth Amendment failure-to-protect claim against Defendant Brittain is **DISMISSED WITHOUT PREJUDICE**;
 - c. Plaintiff's access-to-courts claim against all Defendants is **DISMISSED WITHOUT PREJUDICE**; and
 - d. Plaintiff's claims against Defendants Marhelko and Newberry, regarding their review and response to Plaintiff's grievance, are **DISMISSED WITHOUT PREJUDICE** for lack of personal involvement;
6. Plaintiff is **GRANTED** leave to file an amended complaint within **thirty (30) days** of the date of this Order;
7. The Clerk of Court is directed to mail Plaintiff a civil rights complaint form. Plaintiff shall title that complaint form "Amended Complaint" and shall include the docket number for this case, 1:22-cv-00965; and
8. In the event that Plaintiff fails to file an amended complaint within the thirty (30) days, this action may be subject to dismissal for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania